

GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESS FOR STATE FUNDED PROJECTS ADMINISTERED THROUGH THE CONSTRUCTION GRANTS AND LOANS SECTION

In accordance with G.S. 143-128.2, (effective January 1, 2002), these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager-at-risk, and alternative contracting methods on construction projects in the amount of \$300,000 or more. The legislation provides that the Public Entity shall have a verifiable ten percent goal for participation by minority businesses in the total value of work for each project for which a contract or contracts are awarded. These requirements are published to accomplish that end.

SECTION A: INTENT

It is the intent of these guidelines that the Public Entity, as awarding authority for construction projects, and the contractors and subcontractors performing the construction contracts awarded, shall cooperate and, in good faith, do all things legal, proper, and reasonable to achieve the statutory goal of 10% for participation by minority businesses in each construction project as mandated by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors, or awarding authorities, to award contracts or subcontracts to make purchases of materials or equipment from minority-business contractors, or minority-business subcontractors, who do not submit the lowest responsible, responsive bid(s).

SECTION B: DEFINITIONS

1. Minority - A person who is a citizen or lawful permanent resident of the United States, and who is:
 - a. Black; that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic; that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American; that is, a person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, the Indian subcontinent, and the Pacific Islands;
 - d. American Indian; that is, a person having origins in any of the original peoples of North America; or
 - e. Female.

2. Minority Business - Means a business:
 - a. In which at least fifty one percent is owned by one or more minority persons; or in the case of a corporation, in which at least fifty one percent of the stock is owned by one or more minority persons, or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons, or socially and economically disadvantaged individuals who own it.
3. Socially and Economically Disadvantaged Individual - Means the same as defined in 15 U.S.C. 637. “Socially Disadvantaged Individuals are those who have been subjected to racial or ethnic prejudice, or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically Disadvantaged Individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged.”
4. Public Entity - Means local governmental units.
5. Owner - The local government unit named in the contract.
6. Designer - Any person, firm, partnership, or corporation, which has contracted with the Public Entity to perform architectural or engineering work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. Contract - A mutually binding legal relationship, or any modification thereof, obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
9. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Public Entity to perform construction work or repair.
10. Subcontractor - A firm under contract with the prime contractor or construction manager-at-risk for supplying materials, labor, and/or installation. The subcontractor may or may not provide materials in his subcontract.

SECTION C: RESPONSIBILITIES

1. Office for Historically Underutilized Businesses, Department of Administration
(hereinafter referred to as HUB Office.)

The HUB Office has established a program which allows interested persons or businesses, qualifying as a minority business under G. S. 143-128.2, to obtain certification in the State of North Carolina procurement system. The information provided by the minority businesses will be used by the HUB Office to:

- a. Identify those areas of work for which there are minority businesses, as requested;
- b. Make available to interested parties, a list of prospective minority-business contractors and subcontractors;
- c. Assist in the determination of technical assistance needed by minority-business contractors.

In addition to being responsible for the certification/verification of minority businesses that want to participate in the State construction program, the HUB Office will:

- (1) Maintain a current list of minority businesses. The list shall include areas of work in which each minority business is interested;
- (2) Inform minority businesses on how to identify and obtain contracting and subcontracting opportunities through the public entity;
- (3) Inform minority businesses of the contracting and subcontracting process for public construction building projects;
- (4) Work with the North Carolina trade and professional organizations to improve the ability of minority businesses to compete in the State construction projects;
- (5) The HUB Office also oversees the minority business program by:
 - a. Monitoring compliance with the program requirements;
 - b. Assisting in the implementation of training and technical assistance programs;
 - c. Identifying and implementing outreach efforts to increase the utilization of minority businesses;
 - d. Reporting the results of minority business utilization to the Secretary of the Department of Administration, the Governor, and the General Assembly.

2. Owner

Before awarding a contract, the owner shall do the following:

- a. Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects, and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and non-minority businesses;
- b. Attend the scheduled Pre-bid Conference;
- c. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the Public Entity for public construction or repair work, and minority businesses that otherwise indicate to the Office for Historically Underutilized Businesses an interest in the type of work being bid, or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 1. A description of the work for which the bid is being solicited;
 2. The date, time, and location where bids are to be submitted;
 3. The name of the individual within the owner's organization who will be available to answer questions about the project;
 4. Where bid documents may be reviewed;
 5. Any special requirements that may exist;
- d. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought;
- e. Maintain documentation of any contracts, correspondence, or conversation with minority business firms made in an attempt to meet the goals;
- f. Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) - (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and an affidavit listing good faith efforts, or an affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) prior to recommendation of award;
- g. Evaluate documentation to determine that good faith effort has been achieved for minority business utilization prior to recommendation of award.

- h. Make documentation showing evidence of implementation of Owner's responsibilities available for review by the North Carolina Construction Grants and Loans Section and the HUB Office, upon request.

3. Designer

Under the single-prime bidding, separate-prime bidding, construction manager-at-risk, or alternative contracting method, the designer will:

- a. Attend the scheduled Pre-bid Conference to explain minority business requirements to prospective bidders;
- b. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities;
- c. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals;
- d. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S. 143-128.(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid, and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.
- e. Make documentation showing evidence of implementation of Designer's responsibilities available for review by the North Carolina Construction Grants and Loans Section and the HUB Office, upon request.

4. Prime Contractor(s), Construction Manager-at-risk, and its First-Tier Subcontractors

- a. Attend the scheduled Pre-bid Conference;
- b. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work;
- c. At least ten (10) days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification will include the following:
 - 1. a description of the work for which the sub-bid is being solicited;
 - 2. The date, time, and location where sub-bids are to be submitted;
 - 3. The name of the individual within the company who will be available to answer questions about the project;
 - 4. Where bid documents may be reviewed;

5. Any special requirements that may exist, such as insurance, licenses, bonds, and financial arrangements.

If there are more than three minority businesses in the general locality of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires;

- d. During the bidding process, comply with the contractor'(s) requirements listed in the proposal for minority participation;
- e. Identify on the bid, the minority businesses that will be utilized on the project with corresponding total dollar value of the bid, and an affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f);
- f. Make documentation showing evidence of implementation of Prime Contractor(s), Construction Manager-at-risk, and First-Tier Subcontractor responsibilities available for review by the North Carolina Construction Grants and Loans Section and the HUB Office, upon request;
- g. Upon being named the apparent low bidder, the bidder shall provide one of the following:
 1. An affidavit (Affidavit C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price which is equal to, or more than the applicable goal.
 2. If the percentage is not equal to the applicable goal, then documentation of all good faith efforts is taken to meet the goal. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder;
- h. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the Schedule of Values. The Schedule of Values shall be provided as required in Article 31 of the General Conditions of the contract to facilitate payments to the subcontractors;
- i. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner, the North Carolina Construction Grants and Loans Section, and the Director of the HUB Office, in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another;
- j. If during the construction of a project additional subcontracting opportunities become available, make a good faith effort to solicit sub-bids for minority businesses;

- k. It is the intent that these requirements apply to all contractors performing as prime contractor, first-tier subcontractor, or construction manager-at-risk;
- l. In accordance with GS143-135.5(b) contractors who have been found guilty of discrimination within the last two years are not allowed to bid.

6. Minority Business Responsibilities

Minority businesses contracted by owners or bidders must respond promptly, whether or not they wish to submit a bid.

SECTION D: DISPUTE PROCEDURES

It is the policy of this State that, disputes involving a person's rights, duties, or privileges, should be settled through informal procedures. To that end, minority business disputes, arising under these guidelines, should be resolved as governed under G.S. 143-128(g).

MINORITY BUSINESS CONTRACT PROVISIONS (CONSTRUCTION)

APPLICATION:

The **Guidelines for Recruitment and Selection of Minority Businesses for Construction Projects funded through the Construction Grants and Loans Section** are hereby made a part of these contract documents. These guidelines shall apply to all contractors regardless of ownership. Copies of these guidelines may be obtained from:

Department of Environment and Natural Resources
Division of Water Quality
Construction Grants and Loans Section
1633 Mail Service Center
Raleigh, North Carolina 27699-1633
Website: www.nccgl.net

MINORITY BUSINESS SUBCONTRACT GOALS:

The goals for participation by minority firms as subcontractors on this project have been set at 10%.

The bidder must identify on its bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts, **or** affidavit (Affidavit B) self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. 143-128.2(c) and G.S. 143-0128.2(f).

The lowest responsible, responsive bidder must provide Affidavit C; which includes a description of the portion of work to be executed by minority businesses expressed as a percentage of the total contract price which is equal to, or more than the applicable goal.

OR

Provide Affidavit D; which includes a description of the portion of work to be executed by minority businesses expressed as a percentage of the total contract price, **with documentation of good faith effort, if the percentage is not equal to the applicable goal.**

OR

Provide Affidavit B; which includes sufficient information for the State to determine that the bidder does not customarily subcontract work on this type of project.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.

MINIMUM COMPLIANCE REQUIREMENTS:

All written statements, affidavits, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the Public Entity for performance of this contract. Failure to comply with any of these statements, affidavits, or intentions, or with the minority business guidelines shall constitute a breach of the contract. A finding by the Public Entity that any information submitted, either prior to the award of the contract or during the performance of the contract, is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the State whether to terminate the contract for breach or not.

In determining whether a contractor has made good faith efforts, the State will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and the results of these efforts. Good faith efforts include:

1. Contacting minority businesses that reasonably could have been expected to submit a quote, that were known to the contractor, or available to the State or local government maintained lists at least 10 days before the bid or proposal date, and notifying them of the nature and scope of the work to be performed;
2. Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due;
3. Breaking down or combining elements or work into economically feasible units to facilitate minority participation;
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses;
5. Attending any Pre-bid meetings scheduled by the public owner;

6. Providing assistance in getting the required bonding or insurance, or providing alternative bonding or insurance for subcontractors;
7. Negotiating, in good faith, with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business, based on lack of qualification, should have the reasons documented in writing;
8. Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit;
9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project, when possible;
10. Providing quick pay agreements and policies to enable minority contractors and suppliers meet cash-flow demands.